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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CITY OF DANA POINT,

Plaintiff and Respondent,

v.

JACK R. FINNEGAN,

Defendant and Appellant;

MARK S. ADAMS,

Receiver and Respondent.

G055124

(Super. Ct. No. 30-2014-00746296)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Robert J. Moss, Judge. Affirmed. Request for Judicial Notice. Granted.

Jack R. Finnegan, in pro. per., for Defendant and Appellant.

Rutan & Tucker, A. Patrick Muñoz, Jennifer Farrell and Noam Duzman for Plaintiff and Respondent.

California Receivership Group, Mark S. Adams, Andrew F. Adams and Tom Yatteau for Court-appointed Receiver and Respondent.

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INTRODUCTION

In our prior opinion, *City of Dana Point v. Finnegan* (June 13, 2016, G051155) (nonpub. opn.) (*Finnegan I*), we affirmed the trial court's order appointing a receiver pursuant to Health and Safety Code section 17980.7, subdivision (c). In March 2017, the trial court granted court-appointed receiver Mark S. Adams's motion for an order discharging the receiver, exonerating the surety, and directing appellant Jack R. Finnegan to pay outstanding receivership fees and costs. Finnegan appealed.

We affirm. We have reviewed the appellate record, including the appellate briefs. Finnegan has failed to carry his burden of showing any error, much less prejudicial error, in this appeal.

BACKGROUND

Starting in 2011, respondent City of Dana Point (the City) issued several notices of violations of the building code and the municipal code and notices to stop work and correct violations with respect to a residential property owned by Finnegan. The City filed a petition for appointment of a receiver pursuant to Health and Safety Code section 17980.7, subdivision (c) on the ground the property was substandard and remained in violation of code provisions because of Finnegan's construction of front and rear retaining walls. In December 2014, the trial court granted the City's petition for the appointment of Adams as receiver. Finnegan appealed.

We affirmed the trial court's order granting the petition and appointing a receiver. In *Finnegan I*, we addressed and rejected the arguments Finnegan raised in his appellate briefs challenging that appointment, which included: (1) the petition was not supported by competent evidence; (2) the petition was procedurally defective because it was unverified; (3) the trial court violated Finnegan's due process rights by granting the petition without a trial; (4) the trial court lacked personal jurisdiction and subject matter jurisdiction; (5) the trial court was biased against him; and (6) the order appointing a

receiver violated a variety of constitutional and statutory rights, including the right to equal protection, the right to be free from invidious discrimination, rights under the Fourth Amendment to the United States Constitution, and civil rights under title 42 United States Code section 1983.

On February 22, 2017, the receiver filed a motion for the discharge of the receiver, settling of all accounts, exoneration of the surety, and for an order directing Finnegan to pay outstanding receivership fees and costs. The receiver submitted his final report and accounting.

On March 24, 2017, following a hearing, the trial court granted the receiver's motion for discharge of the receiver and exoneration of the surety under Health and Safety Code section 17980.7, subdivision (c)(9), and further ordered Finnegan personally liable for the unpaid costs of the receivership, citing Health and Safety Code section 17980.7, subdivision (c)(15) and *City of Chula Vista v. Gutierrez* (2012) 207 Cal.App.4th 681, 686-697. In its minute order, the trial court stated: "The remaining balance of \$62,038.59 shall be disbursed with \$5,900.00 to the general contractor, \$36,834.00 to California Receivership Group, and the balance toward the legal fees awarded to petitioner City of Dana Point. Petitioner City of Dana Point may seek recovery of the unpaid balance of legal fees it was awarded against respondent Jack Finnegan. [¶] The thrust of respondent Finnegan's opposition is that the court did not have the authority to appoint a receiver in this case in the first place and that the court should modify the earlier court's order and order restitution to Finnegan. This argument ignores the fact that respondent appealed the earlier court's order and lost. The Court of Appeal affirmed the trial court's decision to appoint a receiver in its decision filed 6/13/16, Appellate Case No. G051155. This ruling is the law of the case and the trial court has no authority to reverse the Court of Appeal."

In a signed order dated March 30, 2017, the trial court ordered that Adams, as receiver, pay off \$36,834 in outstanding receivership fees and costs owed to California

Receivership Group and further directed him to “deliver \$19,304.50 to the City of Dana Point as partial payment on the August 19, 2016 order directing the payment of the City fees and costs.” The court also ordered Finnegan to pay the City \$89,473.50.

On April 6, 2017, Finnegan filed a motion for reconsideration of the trial court’s March 24, 2017 order. In a minute order dated May 26, 2017, the trial court denied Finnegan’s motion for reconsideration, stating: “First, respondent Jack Finnegan has not submitted an affidavit as to what new or different facts, circumstances or law support reconsideration as required. [Citation.] Second, respondent Jack Finnegan has not established any new or different facts, circumstances or law to support reconsideration that could not have been presented before or at the hearing on 3-24-17. [Citation.] Third, even if the court were to grant reconsideration, based on all of the evidence now before the court, the ruling would be the same as to granting the receiver’s motion for discharge and for exoneration of the surety.”

On June 22, 2017, Finnegan filed a notice of appeal stating he was appealing from trial court’s May 26, 2017 order and otherwise from the court’s order for discharge of the receiver and exoneration of the surety. In an order granting Finnegan’s motion to vacate the dismissal of this appeal, reinstate his appeal, and provide him relief from the default that was taken after Finnegan failed to timely designate an appellate record and timely deposit costs for the record’s preparation, this court stated it “liberally construes the notice of appeal filed on June 22, 2017 to be from the order entered March 30, 2017, notice of entry of which was served on April 3, 2017.”

In March 2018, this court was advised that all proceedings related to this matter were stayed due to the filing of a petition for bankruptcy. This court thereafter ordered the parties to inform this court, inter alia, whenever the United States Bankruptcy Court for the Central District of California granted relief from the automatic stay, or that stay lapsed. In October 2018, after this court was informed the bankruptcy court in case

No. 8:18-bk-10762-TA granted relief from the automatic stay of proceedings, it ordered the instant appeal to proceed.

REQUEST FOR JUDICIAL NOTICE

The City has filed a request for judicial notice requesting that this court take judicial notice of the following appellate court records from the prior appeal in this case: (1) Finnegan's appellate opening brief dated July 13, 2015 filed in *Finnegan I*; (2) this court's unpublished opinion in *Finnegan I*; and (3) the California Supreme Court's order denying Finnegan's petition for review of this court's opinion in *Finnegan I* (Supreme Court case No. S235859). Finnegan has not filed an opposition to the request.

The documents the City requests be judicially noticed constitute court records within the meaning of Evidence Code section 452, subdivision (d)(1). We therefore grant the City's request for judicial notice. (*Id.*, § 459, subd. (a).)

DISCUSSION

The trial court has great discretion in appointing, administering, and discharging receivers. (See *City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 931 [court rulings on receivership matters are afforded considerable deference on review]; *Sly v. Superior Court* (1925) 71 Cal.App. 290, 294; *Macmorris Sales Corp. v. Kozak* (1967) 249 Cal.App.2d 998, 1005.) We have thoroughly reviewed Finnegan's appellate briefs. He has not raised any legal challenge to the court's order discharging the receiver, exonerating the surety, and directing Finnegan to pay outstanding fees and costs. He does not challenge the receiver's performance in discharging his duties, the sufficiency of the evidence supporting the discharge order, or the reasonableness of the costs awarded against Finnegan. He has therefore failed to establish the trial court abused its discretion in issuing that order or otherwise erred in denying his motion for reconsideration.

Instead of challenging the order he has appealed from, Finnegan’s appellate briefing challenges the trial court’s prior order appointing the receiver in the first instance. Finnegan previously appealed from the trial court’s order appointing the receiver and, in *Finnegan I*, we rejected his arguments, concluding the trial court did not err in appointing the receiver. “““The doctrine of ‘law of the case’ deals with the effect of the *first appellate decision* on the subsequent *retrial or appeal*: The decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.” [Citation.]’ [Citation.] ‘Generally, the doctrine of law of the case does not extend to points of law which might have been but were not presented and determined in the prior appeal. [Citation.] As an exception to the general rule, the doctrine is . . . held applicable to questions not expressly decided but implicitly decided because they were essential to the decision on the prior appeal.’” (*Leider v. Lewis* (2017) 2 Cal.5th 1121, 1127.) Because we held in *Finnegan I* that the trial court did not err in appointing the receiver, the law of the case doctrine bars Finnegan’s challenges to that appointment now.

DISPOSITION

The order is affirmed. Respondents shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

ARONSON, ACTING P. J.

THOMPSON, J.